

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 April 2023

Public Authority: Maritime and Coastguard Agency
(Department for Transport)

Address: Spring Place
105 Commercial Road
Southampton
SO15 1EG

Decision (including any steps ordered)

1. The complainant has requested information relating to audio recordings of distress calls made from the English Channel. The Maritime and Coastguard Agency ("the MCA") has relied on several exemptions to withhold the information.
2. The Commissioner's decision is that it would not be reasonably practicable in the circumstances to expect the MCA to provide the information as transcripts and therefore it has complied with its obligations under section 11 of FOIA. The Commissioner considers that the MCA is entitled to rely on section 40(2) of FOIA to withhold the audio recordings.
3. The Commissioner does not require further steps.

Request and response

4. On 1 September 2022, the complainant made the following request for information:

"Please provide me the following information under the FOI Act:

- 1) A copy of the recorded audio of all distress calls between people at sea in the English Channel and HM Coastguard between 00:01am on 22 August 2022 and 23:59pm on 28 August 2022.
- 2) For each of the calls covered in point 1, please also provide a copy of the written transcript of the call.
- 3) For each of the calls covered in point 1, please specify the HMCG Global Incident Number for the incident.
- 4) For each of the calls covered in point 1, please specify which HM Coastguard control room handled the distress call (e.g. Dover Maritime Rescue Co-ordination Centre).

I am aware that these documents might need to be redacted for personal information. Please redact only exempted information and provide explanations for those exemptions.

If this request is too wide or unclear, I would be grateful if you could contact me as soon as possible, as I understand that under the Act you are required to advise and assist requesters. If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary."

5. The MCA responded on 23 September 2022 stating:

"As a result of the exemption applied to your request on the 18th August 2022 and as explained in the Internal Review dated 23rd September 2022 any further FOI requests received from the 18th August 2022 from you in relation to this same subject matter will also be treated as vexatious.

Section 17(6) of the Act states that there is no need to issue a refusal notice if:

- the authority has already given the same person a refusal notice for a previous vexatious or repeated request; and
- it would be unreasonable to issue another one.

This exemption applies to your requests of 25/08/22 (our internal reference 4041) and 01/09/22 (our internal reference 4049)."

6. The Commissioner understands that the MCA sent the complainant a revised response to this request on 28 October 2022:

- 1) It relied on section 40(2) of FOIA to withhold the information requested.
 - 2) It stated that to transcribe the calls for the period the complainant requested would create a new dataset and, combined with their other requests, this would exceed the cost cap.
 - 3) It did not provide the information requested because it had not provided the call transcripts. However, it stated that the GIN numbers of all calls in the period of the complainant's request was provided to them in the MCA's response to their internal review request under its reference 4022.
 - 4) It did not provide the information because it had not disclosed any audio calls.
7. The complainant requested an internal review on 1 November 2022. The MCA sent the outcome of its internal review on 24 November 2022. It upheld its original decision in respect of the audio recordings. It revised its position in relation to the transcripts of the calls, relying on section 40(2) as it now considered that they were also personal data.

Scope of the case

8. The complainant contacted the Commissioner on 5 October 2022 to complain about the way their request for information had been handled.
9. The Commissioner wrote to the MCA on 16 December 2022, setting out his understanding of the complaint and asking it to provide its full and final position in relation to this request.
10. The MCA provided its submission on 18 January 2023. In respect of the audio recordings, its position was that:
 - The information was exempt under section 40(2) (third party personal data),
 - alternatively, it was relying on either section 12 (cost limits) or section 14(1) (vexatious) of FOIA to refuse this part of the request,
 - or alternatively it was relying on section 31 (law enforcement) and section 38 (health and safety) to withhold the requested information.
11. In respect of the transcripts, the MCA's new position was that:

- these were also exempt under section 40(2) of FOIA,
 - that it was not reasonably practicable to provide the information in the circumstances,
 - alternatively, it was relying on either section 12 or section 14(1) of FOIA to refuse this part of the request, or
 - alternatively that section 31 or section 38 of FOIA would apply.
12. Given that section 12 and section 14 allow a public authority to refuse a request in its entirety (i.e. without considering what relevant information it holds or whether any of the held information is otherwise exempt from disclosure), the Commissioner would normally look at these exemptions first and, if they were found not to apply, order a fresh response to be provided – giving the public authority the opportunity to identify the information that it held and determine whether any was subject to one or more of the exemptions in Part II of FOIA (which allow for particular types of information to be withheld from disclosure).
13. However, in this case, the MCA clearly holds the recordings and has done a considerable amount of work already to determine the extent to which Part II exemptions would apply. In the interests of resolving the underlying request efficiently, whilst it makes for a longer decision notice, the Commissioner will depart from his usual approach and, if he finds that neither section 12 nor section 14 applies to the request for audio recordings, he will then go on to consider the application of the Part II exemptions to this information immediately.
14. In the case of the transcripts, the Commissioner notes that the MCA's arguments rely on the burden that would be incurred if it were required to carry out the work of transcribing the audio recordings. Therefore, the Commissioner considers that before he can decide whether the request is burdensome, he must first decide whether the MCA is obliged to communicate the information in this manner. If it is not obliged to communicate the information in this form, there would be no burden as the request could be dismissed out of hand. Therefore, the Commissioner will consider the application of section 11 of FOIA first, before going on to consider section 12 and section 14. If the MCA is obliged to communicate the information in this format and the Commissioner considers that neither section 12 nor section 14 applies, he will finally consider whether any of the Part II exemptions apply.

Reasons for decision

The transcripts

15. Section 11 of FOIA allows a requester to ask for the recorded information a public authority holds to be communicated to them in a particular form or format. They can, for example, ask for emails to be printed off, or for data to be provided in a spreadsheet.
16. Where a preference is expressed, the public authority must give effect to that preference – unless it is not reasonably practicable to do so in the circumstances.
17. The MCA holds each audio recording but has not transcribed any that fall within the scope of the request. It originally claimed that it did not hold transcripts for the purposes of FOIA and that producing transcripts would amount to the creation of new information. The MCA stepped back from this stance during the course of the investigation and the Commissioner considers that it was right to do so.
18. A transcript is a verbatim written record of a conversation. It will record (as best it can) the words that were spoken and the person that uttered them.
19. The Commissioner has recognised, in previous decision notices, that an audio recording will, by its very nature, contain more information than a transcript. A transcript cannot effectively convey a person's tone of voice or the speed of their delivery – which, in some cases, can change the meaning of the words considerably.
20. However, whilst a transcript cannot contain all the information within an audio recording, it will only contain information that is also contained within the recording.
21. Therefore, creating a transcript from an audio recording does not require the creation of new information. It is simply the process of taking information held in one form (audio) and converting it into another (a written document). Whilst some of the original information will not be transferred, no new information is added.
22. Therefore, in principle, the Commissioner accepts that a requester has the right to ask for an audio recording to be communicated to them in the form of a transcript and that section 11 requires the public authority to communicate the information in that form – unless it is not reasonably practicable.

23. The MCA argued that it was not reasonably practicable to provide the information to the complainant in this format because of the amount of work involved.
24. The MCA noted that, based on previous experience, it took around 45 minutes on average to transcribe a single audio call. Given that the request encompasses 66 calls, communicating all the information in this format would require more than 49.5 hours of staff time.
25. In addition, the MCA noted that many of the calls are quite distressing to listen to and that transcribing such a large number of calls would be likely to have an adverse impact on the mental health and wellbeing of the staff assigned to such a task.
26. Having given consideration to the matter, the Commissioner is of the view that, in the circumstances of this case, it was not reasonably practicable for the MCA to give effect to the complainant's preference to have the information communicated to him in this form.
27. The Commissioner has given consideration to the nature of a transcript compared to an audio recording. The key difference between the two is that the audio recording contains the tone of the caller's voice which – as the Commissioner will go on to explain below – makes the recording difficult to anonymise. A transcript does not contain this feature and the conversation itself is only likely to contain a relatively small amount of identifiable information – which can be easily redacted. The Commissioner considers that it will generally be more reasonable to give effect to a requester's preference if doing so results in the disclosure of information which might otherwise have been exempt.
28. The complainant's request covers a large number of distress calls. Had it been for just one or two, then it would have been more reasonable to expect the MCA to give effect to this preference, but the MCA is entitled to take account of the amount of time it would need to spend in order to give effect to the complainant's preference.
29. The Commissioner accepts that 45 minutes is a robust estimate for the time needed to transcribe a single phone call – given that it is based on previous experience. He also notes that, given the potential for such calls to involve sections that are either in a foreign language, heavily accented or barely audible due to the environment or the quality of the phone line, the process needs to be carried out by individuals with a certain amount of skill and experience – meaning that the burden would be concentrated on a relatively small number of the MCA's staff.
30. The Commissioner is not wholly persuaded by the MCA's arguments on staff welfare. Given that the original calls are also likely to have been

handled by its staff, the MCA should already have training and support available for those listening to such calls. The Commissioner sees no reason why such resources could not be made available to those assigned the task of transcribing.

31. That being said, the Commissioner does accept that such resources will be finite and that, in dealing with the request, the MCA will be having to divert them away from its frontline services. Therefore, the Commissioner recognises that this does have a small amplifying effect on the burden as a whole – which, as he has outlined above, is already considerable.
32. For these reasons, the Commissioner considers that, in the circumstances, it was not reasonably practicable for the MCA to communicate the requested information in the format sought by the complainant.

The audio recordings

33. In this case, the Commissioner considers that both the section 12 and section 14 arguments can be dismissed relatively easily.
34. Section 12 does not apply in this scenario because the MCA has failed to demonstrate that it would need to spend more than 24 hours of staff time (which is the appropriate limit under FOIA for this public authority) on permissible activities in order to comply with the request.
35. A public authority is only entitled to consider the costs it expects to incur (or time it expects to spend) in determining whether the requested information is held and in retrieving, locating, and extracting any information that is held.
36. In its submission, the MCA has explained that it takes five minutes to locate and retrieve each individual recording. As 66 calls fall within the scope of this request, that would indicate that retrieving all the relevant audio recordings would take around five and a half hours.
37. The MCA considers that it is entitled to aggregate this request with another request for audio calls and transcripts the complainant had made within 60 working days of the present request. It stated that it had spent almost 31 hours processing that previous request and therefore the combined cost of dealing with both requests must exceed the appropriate limit.
38. Whilst the Commissioner accepts that the MCA is entitled to aggregate the two requests, its estimate of the combined burden has been inflated by adding in the time spent converting the previous audio recordings into transcripts (and the time it anticipates spending on the same

activity in relation to the current request). Converting information from one format into another is not an activity the MCA is entitled to consider when estimating the cost of complying.

39. The MCA noted that the previous request sought recordings of 41 calls. Therefore, using the MCA's own estimate of five minutes to retrieve a call, retrieving the 107 calls sought in total by the two requests would take around nine hours to complete: well within the appropriate limit.
40. The Commissioner therefore takes the view that the request could be complied with without breaching the appropriate limit and therefore section 12 of FOIA does not apply.
41. Section 14 equally does not apply to this request because, for the reasons given above, the Commissioner does not consider that the burden of transcribing the audio recordings is one the MCA is required to incur.

Personal data

42. Given that the Commissioner considers that the MCA was required to comply with this part of the request, he will now go on to consider whether the information should be disclosed.
43. A public authority can withhold information which is the personal data of a third party and where no lawful basis exists for that information's disclosure to the world at large.
44. The MCA has argued that the call recordings themselves contain a considerable amount of personal data, including special category data. The fact that someone is calling from a small boat gives a likely indication of their immigration status and their ethnicity (at least to the extent that they are not British), the MCA explained that such calls would often provide health information about either the caller themselves, or other people in the boat, as well as general biographical information about the occupants of that boat. Finally, the caller would often be asked to provide their phone number so that they could be called back or identified if necessary.
45. However, more broadly, the MCA argued that the mere sound of the recording itself was the personal data of both the caller and the call handler and that both could be identified by the sound of their voice – even if specific names were removed.
46. The complainant argued that the recording could be run through specialist software to obscure the voices and that, once this had been done and any names removed, the recording would not be personal data as it would be impossible to identify the individuals concerned. He

pointed to one piece of free software which he said could do the job – though noted that more advanced software was on sale.

47. The MCA explained that it did not possess software capable of this sort of manipulation and that it had no business need to possess any. It was concerned that the free software the complainant had suggested did not conform to government security standards.
48. Having considered the matter, the Commissioner is of the view that the audio recordings are the personal data of both the caller and call handler.
49. Whilst some voices are more easily-recognisable than others, the Commissioner considers that there is a high probability that both caller and call handler can be identified from the original recording – particularly by those who know the individuals concerned. In the case of the call handler, anyone who can identify that person will also find out that they were a call handler – which they might not know. In the case of the caller, anyone able to identify them would also learn that the caller had made a distress call – as well as any other information that was revealed during the course of that phone call.
50. The Commissioner recognises that those most likely to be able to identify the caller or call handler are also those most likely to know the other information that the recording would reveal – but this will not exclusively be the case and there is a realistic probability that someone listening to the original recording would find out something they did not already know, about an individual they can identify.
51. The Commissioner turns next to the issue of redaction. Whether the MCA ought to possess such software is not for the Commissioner to determine. The fact is that it did not when it responded to the request.
52. Whilst the complainant has suggested software that could be acquired for free, the MCA has explained that, at present, this particular software does not meet the required security standards and so could not be installed on its systems without a full risk assessment. The Commissioner accepts that it would be unreasonable to expect a public authority to expose itself to a security risk merely to comply with a request for information. In any case, the Commissioner is not fully convinced that the recording could be manipulated, by this software, in a way that is completely irreversible.
53. The Commissioner is therefore satisfied that the recordings do identify individuals and are personal data. He has therefore gone on to consider whether there is nonetheless a lawful basis on which this can be disclosed.

54. As far as the Commissioner is aware, none of the data subjects has given their consent for the information to be disclosed to the world at large. Therefore, the only lawful basis on which this information could be disclosed would be if it was necessary to satisfy a legitimate interest which outweighed the rights of the data subjects.
55. The Commissioner recognises that the issue of Channel crossings is one that has been controversial for some time. The Commissioner recognises that there is a legitimate interest in understanding how the MCA is dealing with such calls and whether it is directing an appropriate response.
56. There is also a legitimate interest in examining such calls to determine their legitimacy. In previous cases, the MCA has explained to the Commissioner that migrants attempting to cross the Channel will often make false distress calls once they believe those calls are likely to be dealt with by British authorities. They will sometimes make fake claims that their vessel has got into difficulty or that one of the passengers is having a medical emergency – in order to provoke a faster response. The Commissioner therefore accepts that there may be a legitimate interest in making calls available to expert analysts to assist the MCA in identifying fake distress calls more effectively – allowing it to prioritise resources to genuine emergencies.
57. However, the Commissioner does not consider that disclosure to the world at large is necessary to satisfy either legitimate interest. The MCA does not need to make the recordings available to the world in order to seek expert advice. It could bring in experts and allow them access if it considered that such an exercise would be valuable.
58. The Commissioner does not consider that disclosing an audio recording is necessary to allow for scrutiny of the MCA's handling of calls. As has been discussed above, a transcript can be much more easily anonymised and would provide the majority of the information that would be contained in an audio recording.
59. The Commissioner therefore considers that disclosure is not necessary and therefore no lawful basis exists for disclosure. The Commissioner would also note that, even if he were persuaded that disclosure to the world at large were necessary, he does not consider that the legitimate interests identified would outweigh the rights of callers to not have a phone call, that they had made at a desperate moment in their lives, replicated for the world at large to listen to.

As no lawful basis for disclosure exists, disclosure would be unlawful and therefore the MCA was entitled to rely on section 40(2) of FOIA to withhold this information.

Right of appeal

60. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

61. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
62. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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